IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10..08..2005

CORAM

THE HON'BLE MR.JUSTICE MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.443 of 2004
and
W.A.M.P.No.785 of 2004

1.The Chairman,
Tamil Nadu Electricity Board,
NPKRR Maaligai,
Chennai - 600 002.

2. Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
NPKRR Maaligai,
Chennai - 600 002.

3. Chief Engineer (Distribution),
Erode Region,
Tamil Nadu Electricity Board,
948, EVN Road,
Erode - 638 009.

4. Superintending Engineer,
Erode Electricity Distribution Circle,
948, EVN Road,
Erode - 638 009. ..Appellants.

Vs.

Er.R.Manoharan,
AEE (Elecl.) Shift,
230, KVSS Ingur,
Ingur, Perundurai Taluk,
Erode District. ..Respondent.

PRAYER: Writ Appeal filed against the order of the learned single Judge dated 30.10.2002, passed in W.P.No.21374 of 2001.

For Appellants :: Mr.V.Radhakrishnan

For Respondent :: Mr.M.Sureshkumar

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J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal has been filed against the order of the learned single Judge dated 30.10.2002 passed in W.P.No.21374 of 2001, by which the learned single Judge allowed the writ petition.

2. The writ petition was filed for quashing the order dated 24.04.2000 passed by the Chief Engineer (Distribution), Tamil Nadu Electricity Board, Erode Division (3rd respondent in the writ petition) directing that the next annual increment of the petitioner shall be withheld for two years without cumulative effect. The petitioner further prayed for a direction to promote him as per the original seniority list w.e.f. 01.10.2000 the date on when his juniors were promoted, with all consequential benefits.

3. The petitioner appealed against the order dated 24.04.2000, but the same was rejected, and hence he filed the writ petition.

4. It appears that the performance of the writ petitioner was reviewed by the Chief Engineer (Distribution), Erode Region in the second fortnight of February 2000, and his performance was found to be far from satisfactory. As his performance was found to be poor he was advised to improve his work vide Memorandum No.CE/D/ED/Steno/DOCMAN/ D.59/2000 dated 03.03.2000. It is alleged that after serving the above Memorandum dated 03.03.2000 his performance was continuously monitored, but it was found that he did not take any steps to improve his performance. The writ petitioner was called upon to furnish his contribution on his vital subject of *"Accidents"* vide Memorandum No.CE/D/ED/ Steno/DOCMAN/D.59-1/2000 dated 06.03.2000 and he was directed to furnish his reply before 09.03.2000. It is alleged that the writ petitioner neither sent his reply before 09.03.2000 nor requested for any extension of time. It is alleged that he was reminded on 15.03.2000 to send his reply, and he sent his reply on 16.03.2000 along with a detailed statement involving 18 fatal accidents and 19 non-fatal accidents. Regarding 18 fatal accidents it was found that he did not submit any report on the manner in which the accidents happened, measures to be taken for preventing such accidents in future, and other related reports. It is alleged that his contribution to the Tamil Nadu Electricity Board as Assistant Executive Engineer/Safety on his vital subject of *"Accidents" – Fatal and Non-Fatal"* was found to be zero. Hence, a show cause notice dated 21.03.2000 was sent to him by the Chief Engineer alleging the following lapses:

1) *Dereliction of duty*
2) *Acted in a total irresponsible manner*
3) *Was found to be lacking in devotion to duty*

5. It is alleged that the writ petitioner received the show cause notice on 23.03.2000, and submitted his reply on 17.04.2000 after getting an extension of time for 10 days. In his reply the

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writ petitioner stated that he will keep the advice of the Chief Engineer and discharge his duties sincerely in future without any lapses. It is alleged that after examining the reply furnished by the petitioner, considering the gravity of lapses committed by him and considering his non-improvement in his performance on the vital subject of *"Accidents"* and his past record, the Chief Engineer (Distribution), Erode decided to award him the punishment of stoppage of next annual increment for a period of two years without cumulative effect vide his order dated 24.04.2000.

6. Against that order the petitioner filed the writ petition, which has been allowed by the impugned judgment on the ground that the petitioner was not in charge for the period from 01.07.1999 till 16.08.1999 when the accidents in question took place.

7. In our opinion, this writ appeal has to be allowed. It may be noted that the learned single Judge has only based his judgment on the allegation that the writ petitioner was not in charge for the period from 01.07.1999 to 16.08.1999 and he was also on Medical Leave from 10.12.1999 to 31.12.1999. The learned single Judge has apparently overlooked the fact that the review period was from 01.07.1999 to 06.03.2000, and hence even after excluding the above said period of 01.07.1999 to 16.08.1999 and 10.12.1999 to 31.12.1999, there were fatal and non-fatal accidents during the remaining period, and admittedly the writ petitioner did not take any steps to submit his report for this period. Hence, in our opinion, the reasoning of the learned single Judge was not correct.

8. The nature of duties attached to the Assistant Executive Engineer/Safety was to monitor the accidents which occurred in Erode Region and submit his report and to suggest preventive measures to be taken to prevent such accidents. The disciplinary authority viz., Chief Engineer (Distribution), Erode Region has found that during the review period the writ petitioner had not submitted any report on the manner in which the 18 fatal and 19 non-fatal accidents had taken place, measures to be taken for preventing such accidents in future, and other related reports. His contribution to the Tamil Nadu Electricity Board as Assistant Executive Engineer/Safety on the vital subject of accidents (fatal and non-fatal) was found to be zero. Before imposing the punishment the Chief Engineer (Distribution), Erode gave a show cause notice dated 21.03.2000 to the writ petitioner and the writ petitioner in his reply dated 17.04.2000 did not deny the charges. Hence, the order of punishment was on the basis of the material furnished in the show cause notice which was not denied by the writ petitioner. On the other hand, the writ petitioner had requested that the charges be dropped assuring that he would discharge his duties properly in future. In our opinion, there was compliance of the principles of natural justice, and on the basis of the materials furnished to the delinquent the punishment order was passed. The writ petitioner's appeal to the Chairman and further memorial to the Full Board were, in our opinion, rightly rejected. In our opinion, having regard to the gravity of the charge the punishment imposed was very lenient. The learned single Judge was not justified in interfering with the same.

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9. Further, in our opinion the punishment imposed on the petitioner by the Chief Engineer (Distribution) was in accordance with the provisions of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations. The writ petitioner's appeal and memorial were also rightly rejected. Under Regulation 8(a) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations where it is proposed to impose on an employee the punishment of stoppage of increment without cumulative effect for a period upto 3 years the employee shall be given an opportunity of making a representation and such representation shall be considered before imposing the penalty. The writ petitioner was given such an opportunity of making a representation before the punishment was imposed, and his representation was considered. Hence, the procedure was valid. The writ petitioner was punished for his gross-negligence in his duties, and we cannot interfere with this punishment in writ jurisdiction.

10. The power of the High Court in writ jurisdiction is limited. It cannot sit in appeal over the findings of the fact finding authority or Tribunal. It can only interfere if there is error of law apparent on the face of the record. There is no such error of law in this case, and hence the learned single Judge should not have interfered.

11. As regards the petitioner's prayer for promotion, it may be mentioned that the Tamil Nadu Electricity Board by its order dated 27.12.1995 has issued the following guidelines for promotion/appointment of Board employees against whom charges/enquiry are pending or specific charges have been framed:-

(i) *In case of pending enquiries including Vigilance Enquiries and in the case of where specific charges have not been framed, promotion/appointment of such persons shall be considered on the basis of their performance as on date of consideration for promotion/appointment as revealed through personal file and seriousness of the punishments if any previously imposed.*

(ii) *In case where specific charges have been framed or charge sheets have been filed in criminal case promotion/appointment of such persons shall be deferred till the proceedings are concluded.*

In the present case, specific charges had been framed against the writ petitioner and final orders imposing punishment had been passed. As the writ petitioner had been punished his name was not included in the panel for promotion. In our opinion, the writ petitioner cannot claim promotion as of right, particularly, when he had been punished for gross-negligence in his duties and poor performance.

12. Promotion to the post of Executive Engineer/Electrical is governed by Regulation 98 of the Tamil Nadu Electricity Board Service Regulations. Regulation 98(1)(b)(i) clearly states that promotion in all cases shall be made on merit and ability. Seniority

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can be considered where merit and ability are approximately equal. Since, promotion to the post of Executive Engineer is based mainly on merit and ability, in our opinion, the learned single Judge erred in giving a direction to promote the petitioner from the post of Assistant Executive Engineer to Executive Engineer without considering merit and ability, and particularly, when the writ petitioner was undergoing the punishment of stoppage of increment for two years without cumulative effect. In our opinion it was not open to the learned single Judge to sit as a Court of Appeal over the decision of the Departmental Promotion Committee.

13. Moreover, we fail to understand how the learned single Judge could have himself directed the promotion of the petitioner. The learned single Judge could at most have directed the D.P.C. or the concerned selection authority to have considered (or re-considered) the question of promotion of the petitioner, but he could not himself take over the function of the D.P.C. or the selection authority, vide *U.P.S.R.T.C. Vs. Mohd. Ismail (1991) 3 SCC 239 (vide para-12), State of U.P. Vs. Raja Ram Jaiswal, (1985) 3 SCC 131 (vide para-16), etc.*

14. For the reasons given above, this writ appeal is allowed, and the impugned order of the learned single Judge is set aside. No costs. Consequently, connected W.A.M.P. is closed.

10..08..2005.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

1. THE CHAIRMAN
TAMILNADU ELECTRICITY BOARD
NPKRR MAALIGAI
CHENNAI-2

2. THE CHIEF ENGINEER/PERSONNEL
TAMIL NADU ELECTRICITY BOARD
NPKRR MAALIGAI
CHENNAI-2.

3. THE CHIEF ENGINEER
(DISTRIBUTION)
ERODE REGION
TAMIL NADU ELECTRICITY BOARD
948,EVN. ROAD
ERODE-638 009

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4. THE SUPERINTENDING ENGINEER,
ERODE ELECTRICITY DISTRIBUTION CIRCLE,
948, EVN ROAD
ERODE 638 009

1 cc to Mr.V.Radhakrishnan, Advocate, SR.33836

1 cc to Mr.M.Sureshkumar, Advocate, SR.33906

gg (co)

dv/24.8.

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